VOLUME 1

Consensus Processes in British Columbia

BRITISH COLUMBIA ROUND TABLE ON
THE ENVIRONMENT AND THE ECONOMY

BC
B7461
D;R452
1991
v.1
c.3

REACHING AGREEMENT:

VOLUME 1

Consensus Processes in British Columbia

ROUND TABLE

Report of the Dispute Resolution Core Group of the British Columbia Round Table on the Environment and the Economy

91-04902/

Canadian Cataloguing in Publication Data
Main entry under title:
Reaching agreement

Vol. 4 issued in 3 parts.
Includes bibliographical references: p.
Contents: v. 1. Consensus processes in British Columbia
ISBN 0-7726-1346-X (v. 1)

1. Natural resources - British Columbia - Management - Decision making. 2. Conflict management - British Columbia. I. British Columbia Round Table on the Environment and the Economy. Dispute Resolution Core Group. II. Title: Consensus processes in British Columbia.

HC117.B7R42 1991 333.7'09711 C91-092177-6

Table of Contents

1. Introduction **1**
The Dispute Resolution Core Group 1
The Project 1
The Report 2

2. Concepts and Definitions **3**
Conflict 3
Consensus 4
If Consensus Fails: the place of consensus processes within a decision-making system 5
Advantages and Disadvantages of Consensus Processes 6
Consensus and Compromise 7
Techniques for Building Consensus 8

3. Managing Conflict by Consensus: Lessons from B.C. **11**
The Range of Experience in B.C. 11
The Use of Consensus-based Techniques 12
The Benefits Experienced 13
The Special Nature of Environment/Economy Issues 13
Consensus and Compensation 14
Features of a Successful Consensus Process 15
Pre-conditions 15
Characteristics 16
Conclusions 19

4. Reaching Agreement: A Practical Guide **21**
A Guide to Consensus Processes 21
Getting Started 21
Identifying the Participants 22
Establishing the Rules 23
Applying Consensus Tools 26
Dealing with Failure to Achieve Consensus 27
Implementing the Outcome 28
A Note on Time, Resources, and Cost Effectiveness 28
Setting Consensus in Motion 29
The Round Table's Dispute Resolution Assistance Policy 30

5. The Round Table: Next Stages in Implementing Consensus **33**

References **35**

1. Introduction

The Dispute Resolution Core Group

One of the terms of reference guiding the B.C. Round Table on the Environment and the Economy is

> **"to recommend to Cabinet processes and mechanisms for the resolution of land use and other environment/economy conflicts and to foster the resolution of land-use and other environment/economy disputes in situations where all affected parties have agreed to submit their problems to the Round Table".**

The Dispute Resolution Core Group was formed to respond to this mandate. Its aim is to explore and develop ways of resolving disputes through methods based on consensus, and to promote the application of these methods in the public domain as alternatives to political intervention or litigation. As an independent advisory body representing industry, labour, environmental interests, aboriginal organizations, academia and government, the Round Table itself operates by consensus - endeavouring to find solutions to environment/economy issues and structure a sustainable development strategy through dialogue and agreement. The Core Group believes that attempting to solve problems through consensus can enhance sustainable use of natural resources as well as provide British Columbians with meaningful input to decisions regarding these resources.

To this end, the Core Group set out a number of tasks for itself:

- to survey the experience in B.C. in reaching agreements and resolving disputes in land use and environment/economy matters.
- to investigate the theory and practice of consensus-building and conflict management, particularly as it relates to the B.C. situation.
- to monitor conflicts presently occurring in B.C. so as to better understand the opportunities for applying consensus-based management techniques.
- to report on the findings in these areas, and explore the next steps in implementing consensus processes in B.C.

The Project

It was felt that too often we hear about the failures to resolve disputes over land use and not enough about the successes, both large and small. Consequently, the Core Group initiated a project to examine the range of experience in dealing with land use conflicts in the province. The intent was to find out about the conflict management methods that were being employed and the areas in which they were being applied, and to identify some of the elements responsible for their success or failure. The project developed in a number of directions.

Canvass of B.C.'s experience: Government agencies responsible for natural resources were canvassed for examples of negotiative or consensus-based measures used in carrying out their mandates. Representatives of nongovernment organizations were also contacted in some cases. The canvass developed into a series of descriptions of situations where these types of measures were used to try to resolve a land use or environment/economy conflict. For each situation, a set of questions was used to document the main features of the conflict: who was involved, when did it occur, how long did it take to resolve, what steps were taken, who led the process, how did it turn out.

Detailed case studies: While the descriptions demonstrated the range of areas where consensus-based methods have been used, it was decided to examine a few more intensively in order to reveal the details of these experiences. The establishment of the Height of the Rockies Wilderness Area, the first such area designated under the *Forest Act*, was chosen for an in-depth study of key elements of conflict management. Government files and background documents were examined and the major players were interviewed to get a sense of how the conflict developed, the approach taken to deal with it, the end result, and the relative success of the process from the perspective of the parties involved. Although studied in less detail, two other situations - the regulation of industrial waste discharges (the Westcoast Energy Limited case) and the development of environmental standards (the anti-sapstain regulations case) - were also investigated to provide additional insights into the use of consensus in resolving conflicts in very different areas of natural resource management.

Theory and practice: The literature on consensus processes has been rapidly expanding in the last ten years. This is particularly true in the United States, where litigation is a frequent method for resolving environment disputes. Government and nongovernment interests there have been struggling to find ways of keeping the growing number of environmental conflicts out of the courts. This experience was useful to review for insights to managing conflicts in B.C. It was also useful to see how the theory is reflected in current practice in B.C.

The Report

This report aims to fulfill several objectives:

- to describe the underlying premise of the Dispute Resolution Core Group regarding the use of consensus in managing land and resources.

- to present the findings regarding B.C.'s experience on consensus approaches to conflict management, to show what lessons can be learned.

- to offer a "guide" to consensus processes for use in environment/economy conflicts.

2. Concepts and Definitions

There are a number of terms that we use in this report that, when applied in the realm of public policy, create some concern in terms of the potential effect on decisions made by government. Reaching a "consensus" involves "negotiations" that lead to "compromises" in order to resolve "conflicts". These terms may hold a variety of negative connotations to many people. However, public awareness and the conscious use of such methods may signal a healthy society that is coping with social change through an evolutionary process.

Conflict

Most of us do not like conflict, yet it is a common element of our day-to-day lives. Conflict is also an essential element of a dynamic society. It is through conflict that issues are raised, new constituencies are formed, and social changes are effected.

Unfortunately, when we are uncomfortable with conflict, we tend to suppress our differences, and when they do surface, we treat them as personal confrontations. Suppressing conflicts seldom prevents them from arising, but instead leads to greater polarization of the issues before they do come to the surface, at which time positions may be taken that are far less amenable to reconciliation. As the conflict escalates, the focus of the conflict moves from the issues to positions and personalities. Outcomes tend to be cast as "wins" and "losses" rather than resolved problems. Conflicts that are initially suppressed or ignored are likely to be far more confrontational and difficult to resolve in the end. A society with a lack of tolerance for conflict, and no acceptable means of reconciling it, will often lurch from crisis to crisis.

There are four ways in which people deal with conflicts:

a) by avoiding or walking away from the problem, usually when the costs (time and energy) of resolving it are perceived to be greater than the benefits that would be reaped.

b) by relying on a higher authority, such as a government official, arbitrator, appeal board, or court.

c) by resorting to the use of power, such as lobbying, elections, strikes, or civil disobedience in an effort to impose one's will.

d) by reaching some accord, reconciling interests through collaboration and joint problem solving.

In the area of public policy, we are rarely able to walk away from a conflict, which leaves options b, c, and d. In fact, a comprehensive decision-making system should use all three options. Resolution would first be sought through consensus; if that fails, there would be access to a higher authority to impose a decision; if either decision is unacceptable, the controlled use of power would be recognized in an effort to gain a different result. These options are not mutually exclusive, nor do they occur only in that sequence. If first attempts at consensus fail, consensual methods to resolving ongoing aspects of a conflict can be revisited and be successful, even after a decision has been imposed or power actions exercised.

Consensus

Consensus differs strikingly from other modes of decision-making. Consensus can be characterized as "general agreement" that assumes that all parties accept decisions reached through the consensus process. This is in contrast to processes whereby a decision is reached through voting (majority rules), or through some individual or body making a unilateral decision (a designated government decision-maker, or administrative or judicial process). Of all these modes of decision-making, consensus depends the most on good will and a positive attitude; it is essential that everyone involved wants to reach a decision.

Another significant difference between consensus and other modes of decision-making is that it "levels the playing field"; for a defined period of time on the issues that the participants have agreed to address, they participate as equals. This equality factor gives participants the security that they will not be overwhelmed by a majority rule. If, for example, a voting process was followed, the participants would be concerned with how many other participants are "on their side" before deciding whether or not they will participate. In a consensus process, however, participants are much less concerned about this, and are more likely to consider areas of accommodation and innovative solutions.

Operationalizing consensus: It is important to point out that while unanimous agreement may be an ideal goal, participants in a consensus process are free to define "consensus" for operational purposes in any way they wish, *provided that they all agree to that definition*. Hence, participants might define consensus as: 100 per cent agreement (unanimity); the lack of dissension (silence means acceptance); or as agreement by "the vast majority" (all but a very few of the parties). They might also agree that in certain defined areas, a lack of unanimity would lead to another form of decision-making - a "fallback" such as voting or reference to a designated individual or committee - without resulting in the collapse of the entire consensus effort. Such areas might be those that are not central to the substantive purpose of the process, such as administrative matters (location, timing of meetings, budget approvals, etc.).

Another important consideration in operationalizing consensus is that while we may strive for unanimity, consensus does not necessarily mean total concurrence on all aspects of a decision. Environmental/economic disputes are typically comprised of a complex set of issues, such that on an issue-by-issue basis, participants' support of a proposed resolution might range from enthusiastic to lukewarm to "willing to live with it". Consensus can be perceived to be reached however, when the participants agree on a set or "package" of provisions that address the entire range of issues; in other words, it is essential that each participant supports the overall agreement. In other words, the participants may not agree with all aspects of an agreement, but they do not disagree enough to warrant their opposition to the overall package.

Thirdly, there are ways of providing for general agreement even if every issue cannot be finalized. In some cases, closure may not be possible because of the need for additional information or other factors. General agreement could still be stated, specifying those issues that need further investigation and who would carry it out. In others, the parties might agree to disagree, and to report the areas of disagreement clearly. Providing for clear articulation of points of disagreement can still allow for consensus on the overall decision subject to the outstanding issues.

This brings us to the fourth point about operationalizing consensus: the responsibility that comes with exercising the power of dissent. Should one (or a very few) participants disagree with a

proposed decision, then that participant should be responsible for demonstrating clearly that the item at issue is a matter of such principle that he or she cannot accept the decision. Or, he or she must clearly show why and how he or she would be specifically and differentially impacted by the proposed decision. If the dissenting party can demonstrate either condition, then it becomes incumbent upon the rest of the group to make an explicit effort to address those concerns. In many instances, simply identifying the point of dissension and having it accepted by the rest of the group is half the battle in resolving impediments to a general agreement. However, if the dissenting party cannot demonstrate either of these conditions, then that party would be expected to "live with" the proposed decision or withdraw from the consensus process.

Consensus does differ significantly from the other modes of decision-making on which we have traditionally relied. It is important to emphasize however, that in order for it to work, two elements are critical:

- The participants must come to a common understanding of what consensus is in operational terms before embarking on a consensus process. Without such clarity, the first major challenge of group opinion can lead to disillusionment with the consensus process and its ultimate failure.

- There must also be a clear understanding of what the consequences are of failing to achieve consensus. The possible consequences, or "fallbacks", to a consensus decision and their relationship to consensus are explored in the next section.

If Consensus Fails: the place of consensus processes within a decision-making system

Consensus is just one component of a comprehensive decision-making system (Box 1); other means of making decisions are necessary for situations when decisions by consensus are not appropriate, or when attempts to reach consensus fail. We call these alternative processes "fallbacks".

Fallbacks include such measures as reverting to majority rule or referring the issue to a higher authority. Fallbacks are key to making consensus processes work well in that they are perceived as being less desirable than reaching a decision by consensus; in most situations, the participants would prefer to arrive at a decision themselves rather than turn it over to some other person or body. As such, it is crucial that the fallbacks to a consensus process are clearly defined before embarking on a consensus process because they are often the major incentive for persevering with a consensus process.

To round out a comprehensive decision-making system, there should also be processes for appealing decisions and for exercising protest power in the event that the outcome from any decision-making process is unsatisfactory. It would also be useful to build in ways of getting the parties back together to resolve additional disputes once fundamental areas of conflict are resolved by other means. That is, decision-making should be able to "loop back" from authoritative to consensus modes wherever possible.

- Consensus processes - including:
  - clear definition of consensus.
  - clear alternatives to consensus.
- "Fallbacks" and other decision-making processes.
- Appeal processes.
- Exercise of power.

Box 1: *Components of a decision-making system.*

It must be emphasized that consensus processes should not be perceived to be the ultimate solution to all environment/economy conflicts. The Round Table simply believes that consensus processes can provide a better way for reaching decisions on contentious issues within the context of an overall decision-making system. Nor should consensus be considered as a replacement for definitive laws and authoritative enforcement where these are needed. In this context, consensus processes can be used to generate the general agreement and acceptance of "tough" laws that then provides the foundation for their successful implementation.

Advantages and Disadvantages of Consensus Processes

Besides being philosophically different, decision-making by consensus has several advantages over other modes of decision-making.

- Involving the stakeholders in finding a solution leads to greater commitment to whatever decision is reached - be that the solution itself or agreement to have a solution determined by an expert or higher authority. Not involving the stakeholders in the decision-making process often leads to indifference or even resistance to the solution, even if it is a "good" one.

- The stakeholders can bring knowledge and expertise to the decision-making process. Greater creativity, increased resources, and a broader range of potential solutions are made available in a consensus approach relative to other modes.

- There is greater potential to focus on the real needs and interests that are at stake, rather than on diverging opinions and positions.

- The need for "winners" and "losers" and the hardening of positions, embitterment, and desire for retaliation that frequently accompany resolution by a majority or by a higher authority are avoided.

- A decision based on consensus has greater credibility with the parties involved. Future modifications of the decision may be more achievable because the parties are aware of the initial assumptions and the basis for change.

- Conflict resolution by consensus has a better chance of leading to closure of an issue. The parties are committed to the decision such that they are less likely to appeal or protest it.

- The parties can achieve a greater understanding of resource management choices and their implications, and some empathy for the dilemmas that resource managers face on a day-to-day basis. Furthermore, the process of seeking consensus builds working relationships among interests that may otherwise never have the opportunity to work together or learn the others' points of view.

A perceived disadvantage of consensus approaches is that they can initially be time-consuming, costly and frustrating to government, industry, or any interest that simply wants to "get on with the job". Making a decision unilaterally, with a measured amount of consultation, can be quick and efficient. For many types of routine decisions, this approach may be acceptable.

But in B.C., conflicts are heating up as more and more people want to use limited resources for a greater number of purposes. Conflict situations are taxing traditional decision-making processes,

and more decisions coming out of these processes are being protested, appealed, or ignored. Unresolved conflicts are having an effect. There are more incidents of public disorder and more court cases. Misgivings over the ability of government to adequately represent all competing interests are growing. Appeal processes, court cases, and civil disobedience are generating enormous financial costs, are psychologically and spiritually draining, and increase uncertainty. One need only recall South Moresby, the Stein, and Carmanah Valley to appreciate the costs of unresolved conflict to the citizens of British Columbia.

The short-term costs of resolving conflicts by consensus may be high, but the long-term costs of the alternatives are significantly higher.

Consensus and Compromise

Rarely do negotiation and consensus processes result in "all win" solutions. This approach searches for a middle ground and areas of accommodation or compromise. For many, however, the term "compromise" conjures up visions of sacrificing "good" solutions for expediency, and long-term solutions for "quick fixes".

In every dispute, there may be interests that cannot and should not be compromised; for example, those that define the fundamental identity of an individual or organization. It is important that all parties in negotiations understand where those essential interests lie. In addition, compromise does not mean sacrificing principles or fundamental values. Consensus-building can recognize fundamental values and still reach accommodations on such things as "how" rather than "whether" these values will be satisfied. Furthermore, joint exploration of issues may reveal that apparently conflicting interests are not necessarily so. This process often leads to an exchange of information and ideas that results in innovative solutions that meet apparently disparate objectives.

Parties often attend consensus processes with a "shopping cart" of desired outcomes, some that are considered essential, others which can withstand alteration, and still others that can be abandoned. As noted earlier, consensus processes typically result in an agreement on a package of related issues. Even though the parties might be indifferent to or disagree with some parts of the package, enough of their desirable outcomes are met to achieve agreement on the package as a whole. Compromises may be made on some aspects, but the critical issues will have been dealt with satisfactorily.

Science, data, and consensus: Nowhere is there greater concern about the dangers of compromise than when negotiations involve scientific and technical issues - often characterized as questions of fact. Many people believe that if the technically "right" answer can be found, disputes can be resolved. There are many examples, however, of disagreement over facts between qualified experts. In many of these situations, the focus tends to shift to the credibility of the experts and the legitimacy of the science they are performing. The issue becomes "whose facts", and the tactic is to discredit the opposition. Too often, the real disagreement is over the appropriate questions to be asked, and therefore, agreement on the answers is impossible. The result is that those least qualified to make expert determinations (for example, administrators, adjudicators, judges, or politicians) are forced to choose between sets of facts.

Negotiation has an appropriate role in the development of the factual basis upon which difficult decisions are made. It is possible to reach agreement on the scientific and technical issues to be addressed (i.e., the appropriate questions), the means by which the facts will be determined, and

the experts who will undertake the gathering and interpretation of information. With this approach to facts and science, questions of "what facts" and "whose science" are no longer an issue. The accommodations are reached on the questions, not the answers, and all participants have an equal interest in finding the best solutions.

Techniques for Building Consensus

There are a number of techniques that can be employed to assist in resolving conflicts. The following definitions are an attempt to provide a common point of reference for discussion of these techniques as they might be applied in the domain of public decision-making.

Bargaining

Bargaining refers to a process whereby two or more parties reach an accommodation acceptable to those parties. The "bargain" usually involves one or more of the parties undertaking to do or not do certain things.

Negotiation

Negotiation is explicit bargaining. Negotiation occurs when two or more parties enter into a direct exchange in an attempt to find some resolution to their differences. Negotiation is a form of shared decision-making; on a certain set of issues for a defined period of time, those involved agree to seek an outcome acceptable to all involved.

Under our present system of government, virtually every decision is the result of some form of bargaining at some level. However, the bargaining is rarely explicit. For example, a decision-making body may choose to modify its preferred alternative in order to achieve the support, or defuse the opposition, of some other party. While there may be no direct exchange of offers and counter-offers, a public agency might modify a planned action in response to opposition voiced in a public hearing. The anticipated result (other half of the bargain) would be the dropping of the opposition.

The "deals" in such bargaining are usually achieved as the result of discussions between affected parties and administrative agencies and, where major differences remain, within political bodies such as Cabinet. The opposition to the use of negotiation as a way of assisting decisions through consensus may be the result of one or more factors: a failure to consider the degree to which bargaining is already occurring; a perception that not all interests are being represented in the negotiations; or opposition to the inclusion of other interests (such as environmental groups or local governments) as new parties to negotiations.

Consultation

Consultation is the basis of a variety of procedures referred to by such terms as "public participation" and "public involvement". Methods range from public hearings and requests for written submissions to more interactive techniques such as workshops and advisory committees conducted by public agencies, developers, or their consultants. The main feature, however, is that the locum of the decision remains with an established decision-maker and the degree to which the decision is influenced is at the discretion of the decision-maker.

Facilitation

There are a number of methods used to assist consensus-building or conflict resolution that involve a third party. Underlying these methods is the assumption that the involvement and in some cases, judgement of an independent and mutually respected person will assist the parties in discussing options and finding accommodations.

Facilitation is the least intrusive of these methods. Facilitation refers to the task of managing discussions in a joint session. A facilitator may be used in any number of situations, ranging from scientific seminars to management meetings to public forums, where parties of diverse interests or experience are in discussion.

Fact-finding

Fact-finding is the determination of facts behind a dispute and the basis for its resolution. The fact-finder will gather arguments from the disputing interests and usually present them in a report, along with whatever recommendations he or she may have regarding a settlement. The fact-finder's role is purely advisory.

Mediation

This technique has probably been used most in environment/economy disputes. Mediation is negotiation with the assistance of an independent party. Critical to mediation is the relationship between the mediator and the parties at interest. That relationship has four critical dimensions:

- ***independence*** from the parties and the immediate issues in dispute;
- ***mutual acceptability*** to the parties;
- ***a focus on the process*** not the substance of the negotiations; and
- ***assisting in finding a settlement*** mutually acceptable to the parties. The content of the settlement, however, is the responsibility of the parties.

In conflicts over land use, the mediator is likely to perform four major roles:

- a ***convenor*** in assisting the parties to define the terms and conditions under which the negotiations will proceed;
- a ***broker*** representing the interests, concerns, and ideas of one party to another outside of joint sessions and in caucuses;
- a ***facilitator*** in joint sessions; and
- an ***instructor*** or coach in how to negotiate effectively.

3. Managing Conflict by Consensus: Lessons from B.C.

The "lessons" related here come from the three sources that the project set out to explore: the canvass of experience with consensus techniques in B.C.; the more detailed case studies; and the literature on consensus and conflict management. We also had the benefit of input from experts involved in such processes. All told, the situations we examined supported many of the theories that are developing around consensus-building and conflict management, and they also generated a few lessons of their own.

The Range of Experience in B.C.

The canvass of B.C.'s experience resulted in descriptions of 19 different situations where some form of consensus-based decision-making was used to resolve land or resource use conflicts. They are contained in Appendices 1 and 2 to this report. The detailed study of the establishment of the Height of the Rockies Wilderness Area, presented in Appendix 3, reveals more of the details of consensus building in action. This is only a sample of the many situations that we came across but were limited by time and resources to pursue. Altogether, these examples of B.C.'s experience reveal the extent to which consensus-based methods are applied with considerable success in a variety of resource management situations.

Day-to-day administration: Many government administrators assert that resolving conflicts between land or water users or between such users and the public is part of their everyday activities. Land Tenure Disputes (case 17) describes the types of situations that the Ministry of Lands and Parks deals with regularly, negotiating directly with landholders or acting as an informal mediator between them. Water Licensing in the Puntzi Watershed (case 15) shows how facilitating discussions between conflicting water users is part of the policy of the Appeals Unit of the Ministry of Environment's Water Management Branch.

Enforcement is another administrative activity that relies on negotiation and consensus. The Westcoast Energy Ltd. study reveals the technical problems and high level of uncertainty associated with the operation of waste treatment facilities. In those situations, joint problem solving and negotiation between companies and government may be the only way to find effective ways of redesigning that technology to bring industrial operations into compliance with the law.

Approval of major developments: Negotiation and joint problem-solving are commonly used in the review and approval of major developments. The review of the access road into the Golden Bear mine (case 10) involved extensive negotiation among the mining companies, government agencies and the Tahltan Tribal Council. In Bridgeport Harbour Market Development (case 12), the developer and Department of Fisheries and Oceans reached consensus on ways to deal with potential losses to fish habitat.

Land use planning: Insights into the use of consensus-building and negotiation in the planning context were revealed. Most planning processes were local in nature, had a limited number of major stakeholders and had readily identifiable issues. Examples were: the Master Plan for Garibaldi Park (case 1); Pennask Lake Coordinated Resource Use Plan (case 3); the Bonaparte-Tranquille Coordinated Access Management Plan (case 5); and the Height of the Rockies Wilderness Area. The Kootenay Trench Resource Management Strategy (case 4) was of a more regional nature, and was initiated in response to a perceived need for an overall land use plan for the region. In this instance, most of the negotiation occurred among government agencies

attempting to reconcile "best use" of land from a biophysical perspective with "current and desired use" from a socio-economic perspective.

Developing policies and regulations: Several case studies revealed that the development of management policies, objectives and standards is not just an in-house function of government. Cases 6 and 7 document the development of management policies and plans involving the Department of Fisheries and Oceans and user groups. Cooperative Management of Recreational Fishing in the Fraser (case 7) is particularly interesting because it was initiated by anglers concerned over the status of the resource and their continued use of it. In contrast, case 8 reveals attempts primarily by government wildlife and forestry personnel, but involving relevant public interest groups, to develop guidelines for protecting lakeshore habitats for logging practices. Finally, case 9 reveals how a community decided to take development matters into their own hands by formulating a bylaw detailing how the foreshore shall be developed. Their experience involved considerable negotiation with logging and fish farming interests as well as government regulatory agencies.

The Use of Consensus-based Techniques

While the range of situations where consensus processes are used in B.C. is quite broad, the diversity of processes and techniques used is rather limited. Consultation and unassisted negotiation were the most common methods whereas methods involving independent third parties were rare.[1]

There are several factors that might underlie this situation. Government agencies now have a mandate to consult with the public on major planning or development issues, as well as to try to resolve conflicts on a one-on-one basis at the local level. Consultation through public forums and direct negotiation are the simplest, and often the most effective, ways of doing this.

At the same time, there is no explicit mandate to use third-party mechanisms to resolve controversial issues. Third-party mechanisms may be considered to be too costly, and the risk of failure, in terms of extra time and money spent, too great. Furthermore, while there is considerable experience with using such methods in the labour field in B.C., there is very little in the environmental or land use area. Indeed, the use of facilitators and mediators may be viewed by some natural resource interests as exclusive to labour disputes and inappropriate to the resolution of land use issues. Hence, there is generally little tradition and probably not much positive reinforcement from senior levels of government or the public to use third-party techniques.

It may well be that the majority of land use issues in B.C. can be dealt with satisfactorily through consultation and unassisted negotiation. Even so, some of these situations have relied on specific individuals to act as mediators or facilitators on an informal level; for example, cases 9, 15, and 16. Moreover, some major conflicts that have occurred in B.C. could possibly have been resolved earlier or more easily if an independent third party had been involved at early stages of their development.

[1] It is interesting to note that in their survey of the use of negotiation-based methods for settling environmental disputes across Canada, Dorcey and Riek (1987) found that over half of the 32 cases they examined relied on unassisted negotiation.

The Benefits Experienced

The case studies revealed many of the potential benefits of decision-making by consensus that were presented in chapter 2.

Greater commitment to decisions: In case 16, for instance, the parties may have been more willing to accept a compromise to their water-sharing conflict because they were all involved in reaching that solution. As a result, amended water licenses were issued and a formal appeal was dropped.

Greater creativity in solving problems: In the Golden Bear access road situation (case 10), the Tahltans brought intimate knowledge of the landscape and wildlife resources to the negotiating table, which was instrumental in finding an alternative route that was environmentally acceptable. In case 7, the collective ideas of both fisheries managers and anglers led to some resourceful improvements to the way in which the bar fishery on the Fraser River was managed and to the re-opening of a limited Chinook fishery.

Focus on the real interests: In the Bridgeport development (case 12), once the parties perceived common elements of their respective interests, they could concentrate on the real problem - finding a mutually acceptable way of protecting fish habitat. The way in which negotiation was approached in the Deering Island situation (case 13) benefitted greatly from the lessons learned in the earlier development of Bridgeport. In the Pennask Lake situation (case 3), gathering the disputing parties into a planning committee was instrumental in identifying the major sources of conflict.

Avoid hardening of positions: Two examples involving appeal processes (cases 15 and 16) showed how government officials tried to find compromise solutions that satisfied the important interests on both sides, and avoided hard feelings in the process. In Langill Creek example (case 16), the parties finally agreed to ways of rearranging their water uses to allow all parties equitable access.

Establish positive relations, channels of information, and communication: This benefit is obvious in the development of a cooperative management program for the Fraser River bar fishery (case 7). Not only did good relations develop between fishermen and managers, it established a logbook program, unique to that fishery, which provided a source of valuable data on the fishing resource. In one of the few examples of third-party involvement, the formation of a community-based council brought together otherwise disparate interests to find a mutually acceptable way of continuing logging and land development on Galiano Island (case 11). Although no resolution was found to the land development question, a process for collectively determining logging practices was implemented and a working relationship between the company and members of the community was apparently developed.

The Special Nature of Environment/Economy Issues

Most of the experience with conflict resolution using consensus approaches in B.C. lies in the field of labour relations, where there are many examples of successes and failures on which to draw in terms of practical experience and legislative direction. But before this expertise can be applied to the environment/economy arena, it must be realized that natural resource conflicts and labour relation conflicts are quite different.

In most labour disputes, the issues of the dispute are usually clear, the parties well established, and the system for resolving such disputes developed and understood. In contrast, land and resource issues are often ill-defined and appropriate representatives of the conflicting interests may be difficult to identify. Indeed, most resource issues are characterized not just by two but usually a multiplicity of stakeholders. Moreover, these parties typically have little history of communicating or working together. These features depart from the typical labour situation.

In addition, natural resource issues are characterized by high levels of uncertainty, long-term impact, and irreversibility. Uncertainty prevails regarding the elements of complex natural systems and the nature and extent of impact that our activities have on them. Actions usually must be monitored over a long time in order to show measurable effects, and there are rarely quick-fixes for mitigating those impacts once they are identified. Many decisions are irreversible; unlike a wage and benefits package that can be revisited, a dam or mine cannot be "unbuilt" if it should be later found to be unsatisfactory.

Finally, one must remember that even with its advantages of relatively clear parties, issues and processes for resolving conflicts, the labour relations area is still subject to failures in reaching consensus. Negotiations break down and strikes and lockouts still occur. Even if many of the problems inherent in land and resource conflicts could be solved, it would be unrealistic to expect consensus-based processes to be capable of successfully settling all such conflicts.

All this means that experience from the labour-relations front has to be applied with caution to the natural resources realm. Flexibility in the design of conflict resolution is of utmost concern, given the many uncertain variables in type of issues, number and nature of issues, and status of hard facts that any such process must face. Where labour negotiation expertise may be most useful is in educating potential participants in the art of finding consensus and negotiation. Such training could make these participants, be they from government, industry or interest groups, more familiar and comfortable with the process and thereby improve the level of discussion.

Consensus and Compensation

A particularly contentious issue in environmental/economic conflicts in B.C. is that of compensating parties whose interests may be detrimentally affected by a decision. Certain parties may be unwilling to participate in a consensus process because they perceive the risk of substantial losses in terms of rights, access to resources, or economic costs that may result from the process to be too high. Examples include logging companies who foresee decreases in available timber, fisheries managers who anticipate losses in fish habitat and subsequent declines in stocks, or outdoor enthusiasts who perceive the loss of an untouched wilderness area. In addition, decisions emanating from a consensus process may be difficult or impossible to implement because all of the costs involved have not been considered.

It is unlikely that consensus processes can be successful without dealing with compensation head-on. Difficult questions will have to be increasingly confronted: Who will pay? Is it realistic to pay? What are the consequences of not paying? Through a consensus process, however, innovative methods for compensating could be explored - methods that focus not only on dollar values (which often reach substantial proportions) but also on other units of measurement. Examples include compensation in kind (for instance, land swaps or job replacement) or greater involvement in managing the resources in question.

How consensus processes should address the issue of compensation is up for debate, and is an issue that the Round Table wishes to examine further. Should issues of compensation be deferred to some sort of established procedures; for example, a government policy on compensating for lost rights? Or should the development of a compensation formula be addressed through the consensus process itself? These are just some of the questions that need to be investigated.

Features of a Successful Consensus Process

Pre-conditions

Experience in B.C. and elsewhere indicates that a number of conditions must be met before embarking on a consensus process. Indeed, the Round Table has adopted its own set of pre-conditions and criteria in anticipation of requests from government or private interests to assist in dealing with environment/economy conflicts.

1) **There must be an unresolved conflict or potential for conflict.** In order to get people to participate in consensus-building, they must perceive a conflict to exist and feel that existing decision-making processes are not satisfactory to deal with it. This is not a particularly onerous condition, as conflicting interests and activities are not in short supply.

2) **All key stakeholders must have an incentive to seek a decision by consensus.** All relevant interests must share dissatisfaction with the present situation, otherwise one or more will not be committed to finding a joint solution and can undermine the process by their indifference. Furthermore, each stakeholder must prefer resolution by consensus over other modes of deriving a solution. For instance, interest groups may wish to avoid fractious public debate that may divide a community or exhaust their scarce resources; project proponents may want to avoid challenges raised before administrative bodies or mounted in the courts. Furthermore, it is essential that no stakeholder feels that a better deal can be obtained by lobbying higher authorities or by exercising power, otherwise that stakeholder will not be committed to making a consensus process work.

3) **All stakeholders must support the consensus process.** By the same token, such a process will work only to the extent that those who are intended to use it are supportive. Since it may not be politic to appear to be unreasonable, some stakeholders may not oppose the development of a consensus process, but may lack any real investment in its operation.

4) **There must be political will to see the process through.** Support for the consensus process and its results must also exist within the political and bureaucratic levels of government. Overturning or ignoring decisions emanating from a consensus process is a sure way of undermining the process and the relationships developed through it.

5) **The presence of a champion is a boon.** An influential, widely respected person or entity supporting the consensus process can provide initial credibility to its development and the necessary excuse for adversaries to work together.

Characteristics

Given these preconditions, then, what are the ingredients of a successful consensus-based process for resolving conflicts over land and resource use? The literature, the experts, and the experience in B.C. point to the following key characteristics.

Consensus-basis

This feature may be self-evident, but it is important that the meaning of the term "consensus" and its implications be made clear before the process gets started. As suggested in the previous chapter, a common working definition is that everyone can accept a proposed agreement package. This does not require that each party support all aspects of the agreement, but does provide each party with equal authority in reaching that decision. The protection of this authority is crucial to maintaining the willingness of the parties to participate in the process - otherwise, if a party believed it could be outvoted, it could perceive itself as better off by going through authoritative channels for resolving an issue.

The importance of collective or package agreements needs to be re-emphasized in this context. Rarely can a variety of interest groups reach consensus on every aspect of a complex conflict, but in most cases, so long as their main objectives are met, parties are usually willing to give on less important issues and agree to a package deal. For example, in Height of the Rockies, with the exception of one small but crucial portion, enough give and take had occurred that both logging interests and conservation representatives could concur on the boundary to the wilderness area as a whole.

Identification of parties

A process must have clear criteria and procedures for identifying parties to the process. This is often a difficult step, because conflicts over land use often have such a wide range of interests purporting to be impacted. For example, the process must address such issues as the geographical range of interests to be involved - is this a local, regional, provincial or national issue? - or the range of user groups - should recreational interests be involved in a dispute over logging versus range land? For example, the Height of the Rockies process (Appendix 3) involved only five main parties, and was handled almost exclusively within the local area despite its potential to be taken up as a cause by province-wide interests. By contrast, eleven distinct entities representing province-wide interests were involved in the negotiations on anti-sapstain regulation (Appendix 2).

It is equally important to make sure that the entities representing the interests involved can be held accountable for their decisions to both those interests and to the other participants in the process. This, too, is often difficult in environment/economy issues, due to the often loose associations and lack of clear mandate among interest organizations.

Design by participants

Those who design the process should be the potential participants, or should be representative of those who are expected to use the process. The role of the professional, if used, should be to inform the participants of the options for process elements, the possible configuration of those elements, and to ultimately assist them in choosing the elements that meet their needs.

In most of the cases we looked at, a consensus-seeking process evolved not so much by design as

through the efforts of a few key people and a learn as you go approach. This is depicted, for instance, in the informal process developed by fisheries managers and anglers in the Fraser Valley (case 7). More formal processes were ones initiated under government policies. For example, the development of plans for Pennask Lake, the Bonaparte-Tranquille area, and the Height of the Rockies were all ones initiated under planning policies of the Ministry of Forests. Although a process design may have been initially imposed, the stages that these processes followed (particularly in Height of the Rockies) were often at the initiation and design of the participants.

These two characteristics - involving the appropriate parties and providing for process design by the participants - point to the necessity to go slowly and with care at the beginning of any consensus-based process. Not only identifying the important interests, but establishing understanding and trust among those parties, especially when those parties have dealt with one another before, is critical to the success of the process but takes time to develop.

Principals involved

People who are in a position of relative authority within their organization should play the central role in designing the process. In government, this may require some delegation of power from central to regional levels to allow regional managers who best know the details of an issue to negotiate with the appropriate level of authority. In industry and non-government organizations, principals might be senior executives and chairpersons. Good management practices of delegation and empowering the appropriate levels of administration are essential to the representation of interests in consensus based processes.

The direct participation of principals will create an investment in, and raise the profile of, the process, providing a basis for accepting controversial outcomes. The importance of involving decision-makers rather than advisors was brought home in the Bridgeport development, where negotiations stalled until the main parties (the harbour commission and fisheries managers) dealt with each other directly. Similarly, in the Westcoast case, once the regional waste manager and senior executives became directly involved, the speed with which measures were taken to remedy the problems greatly increased.

Equal opportunities

Participants in a consensus process must have a level playing field in terms of their ability to participate in a meaningful way. Opportunities for users to learn and develop negotiating skills should be available. Training sessions prior to embarking on a consensus process can provide all parties with the opportunity to arrive at a common understanding of their objectives.

There must also be equal access to information and to the ultimate decision-makers. The withholding of critical information can disable the process and working relationships among the parties.

Thirdly, while the participation of some parties may be supported by the stakeholders that they are representing (for instance, where participation is part of the job of government or corporate staff), others may actually be forced to take time away from their work at their own expense, and/or support their participation through personal funds. Alleviating financial hardship faced by such parties through reimbursements is necessary to ensure equal participation and attention to all interests.

Flexibility

The forum for developing the process should be flexible, providing for the involvement of a variety of interests. Sufficient time should be available to enable full participation of the interests, and to allow for "selling" of the process to the parties for whom it is being created. The process itself should be designed to fit the specific personal, legal, and administrative realities of the situation, taking account of past experience and expectations of the interests involved. In this regard, it should establish a general framework but leave sufficient flexibility to enable the disputing interests to tailor it to meet their specific needs. The specific characteristics of the process, however, must be realistic, including such matters as the number of participants who are actually at the table, the number of issues to be dealt with, deadlines, ratification procedures, and nature and purpose of written agreements.

Process implementation

The process should provide for timely implementation of its various stages, with consequences for failing to meet the timeframe clearly indicated. Methods for resolving any disputes over procedural matters should also be spelled out. Funding needs to be adequate for effective implementation of the process. Its source (government, industry, private organizations, or some mix) would depend on the nature of the issues and objectives of the process.

Incentives for use

Incentives to participate were noted earlier as a condition of establishing a consensus process. The process itself should build in its own incentives for use; it must sustain the conviction that a decision by consensus is better than the alternatives of decisions imposed by higher authorities or achieved through political means. By corollary, there must be no obstacles to the effective use of the process.

Positive incentives such as increased access to decision-makers, timeliness in obtaining government approval, provision of crucial data, or funding for involvement in the consensus-based process could be available. For instance, parties to the consensus reached on Height of the Rockies not only had a mutual desire to remove the uncertainty regarding the status of the area, but also had the implicit commitment of the Minister of Forests to implement whatever recommendations resulted from the consensus process. As another example, in appeal situations such as in cases 15 and 16, the parties appealing the applications for water use could be told that if they first attempt to seek resolution by agreement, their appeal would go to the top of the list of cases to be dealt with by the appeal authority.

Role of public agencies and decision-makers

There is some debate as to how the legislated mandate of decision-makers can be reconciled with the need to seek consensus and provide greater public participation in decisions. In legal terms, government decision-makers cannot be seen to be "fettering their discretion" by participating in such processes. It is important that decision-makers concur with the use of a consensus process, are familiar with the issues that are being dealt with, and ensure that the broader interests of the public are taken into account. Representatives from regulatory agencies might participate in the process to present the perspective of the government and options that would be acceptable from that perspective; otherwise, the discussions could fail to take into account certain administrative and legislative realities.

Beyond that, however, it is necessary to carefully consider the role of regulatory agencies in any consensus process in light of their responsibility to administer the law. This is an area that needs to be investigated more thoroughly, and one which the Round Table intends to pursue in refining its ideas on consensus processes.

Role of process managers

Process managers may be public servants (as in Height of the Rockies, Appendix 3) or private entities (as in Galiano Island, case 11), but their independence and impartiality must be both ensured and protected. It is important to have the process overseen by someone who understands negotiations and sufficient details of the issue at hand to effectively assist the parties in using the process. Process managers however, must be able to maintain neutrality in order to remain credible in the eyes of all parties and the public.

Education and public understanding

Last but far from least, not only the users but the public must understand what the consensus process is all about, what it is supposed to achieve, and how it operates. The process must be seen to be open, fair, and equitable or the resulting consensus and decisions will not last.

Conclusions

So far, we have presented consensus in the form of a process for reaching decision under certain conditions. In actual fact, consensus can be viewed as an attitude to be injected into all aspects of governance. Regardless of the nature or magnitude of the decision to be made, consensus can make it easier to reach and to implement.

All modes of decision-making — consensus, authoritative, and the use of power — have a role to play in managing environment/economy matters in B.C. The key question is finding the appropriate mix of these modes that leads to equitable, effective, and efficient decisions. We suggest that consensus could be used more extensively than is presently the case. With this in mind, the next chapter offers step-by-step suggestions for determining when consensus is appropriate and for establishing a consensus process.

4. Reaching Agreement: A Practical Guide

So far, we have looked at consensus processes in terms of their general advantages and disadvantages, and the experience with their use in B.C. How do we go about applying these approaches more widely? In this chapter, we provide a practical guide to implementing consensus processes (Box 2). In the concluding chapter, we preview the next steps in developing suggestions for their utilization in making land use and environment/economy decisions in B.C.

A Guide to Consensus Processes

Getting Started

Getting a consensus process underway really involves two steps: deciding whether a consensus approach is appropriate to the issue being proposed, and initiating the process.

1. Determine whether consensus is appropriate; if so, initiate the process.
2. Identify the interests (stakeholders) and the appropriate representatives of those interests.
3. Establish the rules of the process:
   - define consensus.
   - determine the structure.
   - define parties' responsibilities.
   - decide on confidentiality, data.
   - establish deadlines.
4. Apply consensus tools as appropriate: training, expert assistance.
5. Set out the fallbacks if consensus is not achieved.
6. Establish how the outcome will be implemented.

Box 2: *Steps in a consensus process.*

Determining whether consensus is appropriate: While consensus may be the preferred way of reaching a decision or resolving a conflict, the situation may not be appropriate for a consensus process. As mentioned in chapter 3, some issues are so strongly based in fundamental values that the parties cannot compromise their positions. In other situations, the issues may not be ripe for consensus; the parties do not yet perceive an urgent need to resolve the issue, and would rather continue to pursue their interests through other means such as public confrontation. At the same time, however, it is often helpful to catch conflicts at an early stage, before parties become so entrenched in their positions that there is little room for accommodation and while alternative solutions are still available.

Clear criteria are needed in order to determine whether a consensus approach is appropriate in a given situation. Experts in mediation in Canada (Dorcey, 1986; Haussmann, 1986; Shrybman, 1986) and the U.S. (Pritzker and Dalton, 1990) have proposed a variety of questions that can be asked before deciding to proceed with a consensus process (Box 3).

Initiating the process: There needs to be some way in which interested parties can expect that a matter of concern will be dealt with in a consensus process, or can propose that it be managed in this way. For some types of issues, consensus processes might become the customary or routine mode of decision-making; for instance, local, and regional land use planning. Other types of situations might be presented through current government referral systems; for example, government agencies reviewing an application for land or water use might agree that the application should be dealt with through a consensus process involving the applicant and affected parties.

For the most part, government agencies would take responsibility for initiating consensus processes as they would be ultimately responsible for implementing the outcomes. However, there

may be situations that conventional government procedures may not catch or in which government agencies have too great a stake to act as overseers of the process. In these situations, it may be desirable to have some identifiable person or body to which interested parties can go with issues of concern. This entity would have the authority to assess the matter and set up a consensus process should it feel that consensus is a viable way of handling the conflict. It could also act as an "early warning" system, fielding challenges to decisions and requests for resolution of disputes before they become crisis situations.

1. Is there a dispute? Is there a strong perception of a conflict that needs to be resolved?
2. Are the real issues addressable at this time?
3. Are the real issues negotiable?
4. Can the major interest groups be identified?
5. Are there representatives who can speak for the interests?
6. Do all parties have an interest in settling the issue?
7. Are there meaningful deadlines for reaching agreement?
8. Are there negative consequences for failing to agree or incentives for reaching agreement?
9. Can a viable process be structured? or are there outstanding issues that need to be addressed before a process gets underway?

Box 3: *Criteria for "screening" situations for consensus processes.*

Identifying the Participants

The task of identifying participants can be relatively straightforward for small-scale issues that are confined to a specific geographic area but even then, an issue might involve several levels of government and a surprising number of interest groups. The task becomes more difficult as the complexity of the issue increases in terms of the number of questions and the geographic boundaries.

Regardless of its complexity, the better the representation of interests, the better the achievement of public confidence in the process and public support of its results. Identifying the participants is such a crucial stage that a significant portion of time and resources must be invested in it. This task also has two parts: identifying the **interests** and then identifying the appropriate **representatives** of those interests.

Identifying the interests: The stakeholders - those who must be involved on the basis of their direct interest - include any government body with pertinent management responsibilities; all interests who may be significantly affected by the decision; and all those who might intervene in the decision-making process or block or delay that process. Steven Shrybman (1986: 84) particularly emphasizes the importance of identifying "the stakeholders with the power to derail or slowly undermine any agreement to which they are not made a party". He points to examples where agreements have been thwarted by the unexpected appearance of a party who, not included in the process, decides to challenge its outcome. It is also useful to identify those parties whose involvement would help to legitimize the process - "champions" of this approach to resolving the issue.

Identifying the representatives: One way of actually selecting those who would take part in a consensus process is to leave the task to the initiating party or parties, or the lead government agency. The parties or agency however, may also wish to have a neutral party be responsible for choosing representatives. The involvement of a neutral party makes the selection more objective, letting those parties responsible for initiating the process (who will often be parties themselves)

off the hook in terms of choosing and rejecting certain representatives. The neutral party may be someone that the parties mutually trust, or a professional hired by the parties or government, or an entity established for the purpose of overseeing consensus processes.

Where issues of public policy are involved, the identification of stakeholders typically results in there being a large number of individual groups or organizations with similar interests in the issue; for instance, several forest companies, a number of regional government agencies, or a variety of environmental groups. In order to keep the number of representatives directly involved in the process to a manageable size, it may be necessary to consider forming coalitions among like-minded interests. Philip Harter, a well-known advocate of negotiative processes in the U.S., describes the representation of interests as the "wedge principle". While there may be only one or two people actually sitting at the discussion table, they may be backed by a team of representatives who themselves confer with a wider group of people, forming a broadening constituency or wedge behind the representatives at the table.

It is therefore vital to ensure that the participants chosen are truly responsible to the parties they are representing. It is obligatory on the part of whoever carries out the selection, particularly where coalitions of interests are involved, to consult with the individual agencies, organizations, businesses, and citizenry to gain some sense of who is viewed as a leader or accepted spokesperson, and who may therefore have the greatest credibility in representing that interest.

By the same token, the representatives should be principals within their respective parties who are able to deliver decisions and commitments on the part of their constituents. This can be difficult to realize where representation of a particular interest is dispersed over a variety of organizations or individuals. To the extent it is possible, however, choosing people of similar rank or level of power within their respective organizations will help to ensure that all interests can offer the same level of commitment to agreements. It is further suggested that there be a minimum of two representatives per participating party (be that individual organizations or coalitions) so that there would always be a backup should one representative be unable to attend or has to drop out. It also takes the pressure off a single representative because the two representatives can support each other, allowing them to feel more confident in their role.

As a final consideration, the consensus process should allow for the inclusion of additional parties as new issues arise or additional interests are identified. This could be accommodated by encouraging the expansion of a party or coalition to include the new interest, or by adding a separate party.

Establishing the Rules

It is critical to deal with the "how" of a consensus process before proceeding with the "what". In his article in the *Negotiation Journal*, Gerald Cormick (1989) points out that a prime reason for the failure of consensus processes is that the parties do not have a clear understanding of the process itself; ".. negotiating the issues without a common understanding of the 'rules of the game' is like attempting to play football without first establishing one set of rules" - a Canadian team would play by Canadian format, an American team by their country's rules, and so on.

Rules of operation, or protocols, should be established by the parties. The assistance of an expert third party who can bring some experience to bear on the options that are available. Besides clarifying the nature of the process, the act of establishing protocols provides the parties with the opportunity to develop working relationships and some perspective on each others' points of

view. Matters of strategy can be pre-addressed before they become issues in the discussions that ensue. Moreover, parties can practice and experience reaching agreement on matters other than the substantive issues that the process will formally address.

In the labour-management arena, protocols of negotiating are pre-established by law and tradition, but no such prior framework exists for land use issues. For the latter situations, there are a number of matters that need to be considered in setting protocols for consensus processes. They are listed in Box 4 and discussed in greater detail below.

- Purpose and scope of the process.
- Working definition of consensus.
- Structure of negotiations.
- Participants' responsibilities.
- Confidentiality and the media.
- Provision of data.
- Deadlines.
- Failure to reach agreement.

Box 4: *Suggested protocol topics*

Purpose and scope: The purpose of the process should be briefly but clearly stated; the issues to be addressed can also be specified. The participants should be able to address all potential consequences of agreement as part of their terms of reference, including the matter, referred to in chapter 3, of compensating interests who may be detrimentally affected by the outcome of the consensus process.

Definition of consensus: An operational definition of "consensus" should be agreed to by the participants. For instance, it might mean unanimous agreement or no explicit disagreement, but it is vital that the definition be established before the process gets underway.

Another practical consideration is whether consensus is defined as agreement by each individual participating in the process, or by caucuses, or coalitions of like interests. Defining consensus as the agreement of all individuals may be appropriate in situations where the issues are relatively unstructured and there are few formal organizations involved. Where a large number of representatives are involved and there are definitive organizations or areas of interest, it may be appropriate to determine "negotiating teams" or interest caucuses and define consensus as agreement of these larger entities. Cormick (1991) provides an example where the parties to a process to establish regulations for development of offshore oil resources divided themselves into five such teams: federal government (five agencies); state government (four agencies); local government (several counties, cities, and districts); industry (a number of oil companies and associations); and environmentalists (a coalition of local, state, and national organizations). In this situation, a protocol would define consensus as agreement of the teams.

Structure of negotiations: Structural considerations include: the range of interests being represented; the number of representatives per interest; how more interests or representatives could be accommodated if that should prove necessary; if sub-groups would be formed and what their role would be *vis-à-vis* the whole negotiating group.[2]

[2] Cormick (1989) points out that forming sub-groups can be particularly useful to address particular technical or procedural problems, to negotiate issues of interest to a subset of parties, or to do more detailed work such as drafting the wording of agreements. Working relations can be developed in sub-groups that may not otherwise be achieved when dealing with a large number of participants. Sub-groups can also be a means of involving those not at the table but are part of representative teams. It is essential, however, to have a clear understanding of their role, their ability to bind their party, and their terms of reference.

Also, the matter of reimbursing parties for costs of participating in the process, particularly those for whom participation would create a personal financial burden, should be addressed. A protocol could include criteria for eligibility, expenses covered, and how to apply for reimbursement.

Participants' responsibilities: The responsibility of participants to represent their constituents accurately and to keep them informed of the results of the process should be addressed. How participants would achieve ratification of agreements should be spelled out, along with the extent to which participants and those they represent are expected to be bound by an agreement.

A protocol could also address such matters as attendance and uncooperative conduct by participants. Calling on the participants to deal civilly with one another may seem trite, but can provide a handle for dealing with such problems should they arise (Cormick, 1989).

Confidentiality: The level of openness, or conversely the confidentiality, of the process must be determined. The parties must reach agreement on whether some or all their sessions will be open or closed to the public; if open, the extent of advertisement of these sessions; if closed, how completely the sessions are recorded. The parties should agree on how much information shall be provided publicly or to the media, and by whom. Options here include complete prohibition of media contact (usually an unrealistic action and one that often breeds public suspicion); all contact through the mediator as official spokesperson; or issuing joint press releases. Finally, the detail and content of meeting notes, and their use both during and after the process needs to be clarified. (Many mediators prefer to avoid the use of the term "minutes" to avoid having the content of meeting notes become an item of debate as can occur in the approval of minutes.)

Provision of data: The responsibility of parties to provide technical or scientific information they have at their disposal and that is necessary to the discussions should be addressed. This necessitates specifying ways of dealing with proprietary information (e.g., by aggregating data or providing data to a mutually agreed third party for analysis), and to indicate the parties' responsibility to keep such information confidential. The protocol should "recognize the legitimacy of any party validating the information provided by any other and the need of public interest groups for technical advice" (Cormick, 1989: 130).

Often, data that may be at hand has little validity until the parties have agreed on what questions need to be addressed. The protocol should therefore also specify how jointly approved research or information-gathering could be undertaken and who has financial responsibility for supporting it.

Deadlines: Studies of consensus-based processes in B.C. and other parts of Canada revealed that the lack of clear deadlines may have unnecessarily prolonged these processes or inhibited settlement (Dorcey and Riek, 1987). A consensus process cannot be seen as a way of stalling a decision; the parties and decision-makers must be assured that some result will be reached within a reasonable timeframe.

Accordingly, a protocol should set a deadline for conclusion of the process, guided if at all possible by some external decision point such as a scheduled administrative or legislative action. Interim deadlines could also be specified, custom tailoring them to the issues to encourage parties to deal with them in a timely manner. Interim dates could also be established when the parties would assess progress and decide whether to continue the process.

Applying Consensus Tools

Direct discussion and negotiation are the essential tools of any consensus process, but these can be greatly enhanced in two ways - by honing the negotiating and consensus-building skills of the participants themselves and by providing third-party assistance.

Training: Consensus skills could be passively or actively promoted. People and organizations who are becoming increasingly involved in consensus processes could be encouraged to take such training of their own volition; it could be recommended to corporations and government agencies that they provide such training to their staff.

A mediated process is in itself a training opportunity as a good mediator coaches the parties in negotiation skills, points out the areas of potential compromise, suggest ways of presenting options, and so on. Training can also be built in as a formal stage of a consensus process. Pre-session workshops could introduce the participants to the basics of consensus, negotiating, and problem-solving. These workshops could be run concurrent to efforts to develop protocols such that participants get a chance to apply theory to practice. These training sessions can also benefit the entire consensus process by acting to break the ice among participants and reinforcing the development of working relationships.

Providing training for every consensus process seems to be an onerous task. The need to introduce people to the meaning of consensus and to nurture skills in achieving it however, will diminish as experience in consensus processes is built up and relationships between interest groups are formed. The investment may seem disproportionately large at the outset, but the long term rewards can be significant.

Expert assistance: Facilitation and mediation are the most common forms of third-party expertise that are considered in environment/economy and land use conflicts. The difference lies primarily in the level of involvement in the negotiations, with a mediator taking a much more hands-on role as not only a facilitator at meetings but also as a broker of ideas and concerns within and outside joint sessions. As stated in chapter 2, the important characteristics of third-party experts are that they be viewed as independent from the parties and the immediate issues, be mutually acceptable to the parties, and focus on the process rather than the substance of the negotiations. The goal of the expert is to assist in finding a settlement that is satisfactory to the parties; the content of that settlement is the responsibility of the parties themselves.

The expertise for acting as a neutral third party or for providing training can reside in a variety of forums. Government agencies may want to have staff with the capacity to provide third-party services in appropriate situations, or who are assigned the task of providing access to such services and advice on their use. The private sector could also be a major source of such expertise, as well as community-based and non-profit organizations.

There appears to be pertinent expertise being developed in all of these venues in B.C., but is it being made available equally to all interests in environment/economy issues? Is the expertise being developed quickly enough to deal with the burgeoning land use crises? Questions like these have led to some contemplation of a central body, a government-based or funded mediation institute that would support a wide range of environment/economy issues and would accelerate the growth of the needed skills. Such an institute could have units throughout the province.

Dealing with Failure to Achieve Consensus

The presence of incentives to seek resolution is an essential criterion for any consensus process. All stakeholders must share dissatisfaction with the present situation, and each must prefer a collaborative resolution over any other mode of deriving a solution. Nonetheless, even with the presence of incentives and the best efforts of all parties, there will be times when agreement cannot be reached. There are a variety of levels of consensus failure, and a number of options for dealing with them.

Where there is disagreement on a limited number of sub-issues, the parties might agree to include statements defining the areas of dissent within the final agreement, or to identify areas requiring further research and identify who should do it. This may be an acceptable approach for dealing with matters that are not so central to the issue as to disable the overall agreement.

The parties might also choose to hand the outstanding items in dispute to a government authority or some other entity (for example, a mutually acceptable panel of scientists) to determine. In this way, a decision is made that may not entirely satisfy the parties but that they can condone in light of other, satisfactory aspects of the agreement. Alternatively, the parties could refer an issue to a government official or even an independent expert for a recommendation rather than a determination; a recommendation from a highly respected individual may often lead the parties back to the table on that issue. The parties can agree to these kinds of measures at the time the disagreement arises, or establish such methods when setting the protocols for the consensus process.

When the failure to reach consensus is more fundamental and no overall agreement can be reached, then the decision must revert to fallbacks or other components of the overall decision-making system described in chapter 2. The conventional alternative to consensus-based decisions is for the responsible government official to use legislated authority to impose a solution. But this places a heavy onus on a single official or agency to take all interests into account, and is an alternative that is being viewed with increasing scepticism by the concerned public.

Another possibility is to hand unresolved conflicts over to a body specially established to deal with them. This idea raises a variety of questions about the composition and operation of such a body.

- Should it be advisory or decision-making?
- Should it operate as a court, an administrative tribunal, an arbitration board, or in some other mode?
- Should it be inside or outside of government?
- Who should appoint its members, and on what basis would they be appointed: as representatives of certain constituencies or as independents?
- Should it be created under legislation or policy?
- What kind of procedure should it use?
- Should it operate by consensus?
- Should its mandate be only to review decision, or should it also be authorized to administer and assist collaborative processes?

- At what point should an issue be referred to a political entity, such as a Minister or Cabinet?

- What relationship should political entities have to this type of body?

In addition, this special body should have the capacity to bring disputing parties back together to resolve additional issues once some resolution on the fundamental conflict has been made - to provide the loopback mechanism mentioned in chapter 2. How could loopbacks between consensus and other components of the decision-making system be implemented?

These ideas need to be more fully explored in the context of land use and environment/economy matters, and as presented in the final chapter of this report, the Dispute Resolution Core Group intends to pursue them in future reports. Volume 2 will look at some existing decision-making processes to see if consensus was tried initially, and if the fallback processes were effective. Volume 3 will examine the decision-making system for environment/economy matters as a whole in B.C., to see if it could use some restructuring in order to provide the appropriate incentives for consensus processes as well as effective relationships between consensus processes and other components of the system.

Implementing the Outcome

Along with attempting to reach an agreement, a consensus process must be capable of addressing its implementation. Without some clear indication that the results of the process will have teeth, the incentive to reach agreement is greatly diminished. In this context, there are several key features that need consideration.

- The support and commitment of governing agencies responsible for following up on proposed decisions and recommendations coming from the process must be clearly indicated. These agencies must be represented in order to make sure that jurisdictional boundaries and regulatory constraints are appropriately considered; that the negotiations do not assume or expect them to do something that they are not capable of doing.

- The participants should be able to propose a schedule for implementing the results of the consensus process, providing some certainty as to how long an agreed outcome will take to be put in place and how long it will last.

- Recognizing that the agreement is occurring within a dynamic environment, the process should also deal with review and revision of the agreement. Who would be responsible for conducting reviews, for monitoring compliance to the agreement, and for opening up an agreement for renegotiation should be determined.

- It is essential that the parties be able to address all potential consequences of an agreement, including the recognition that consensus may not be achievable unless issues of compensation are appropriately addressed. In B.C. in particular, it is unlikely that any consensus on reallocation of land uses can be accomplished without directly addressing compensation.

A Note on Time, Resources, and Cost Effectiveness

As was discussed in chapter 3, one can criticize consensus processes as being too time consuming and costly to be a viable option for many decision-making situations. The long-term benefits in terms of establishing relationships, creating innovative solutions and gaining support for

decisions however, far outweigh the initial costs of consensus-building. In their book *Breaking the Impasse*, Susskind and Cruikshank (1987) suggest that officials that act unilaterally in a public dispute forego several months of negotiation but then face roughly twice that time in appeal procedures and court cases. Similarly, in assessing the application of conflict resolution techniques in B.C., Dorcey (1986) suggests that misperceptions exist about the costs involved because the enormous costs of trying to resolve conflicts once they have blown up to crisis proportions are typically ignored in such accounting. So too, the benefits derived from educating the participants and the public, and the working relationships that are established are not taken into account.

The same general principle applies within consensus processes themselves. You will note that this guide spends considerable time on preparing for discussions and negotiations; indeed, its first four steps "Getting Started", "Identifying the Participants", "Establishing the Rules", and "Applying Consensus Tools" are all preparatory to the act of collaborative decision-making. In this respect, it is necessary to follow the adage "you must go slow before you can go fast"; establishing the proper foundation in terms of understanding the process and developing working relations among the participants takes time but is essential. As noted earlier, the time required may well be reduced over the long haul as interest groups build up experience with the process and each other.

Setting Consensus in Motion

How could this guide be used within the present system of government decision-making on land use and the environment? As we have seen in our case studies, government already employs consensus-building techniques to some extent in a variety of forums - from large-scale public participation in the development of policies, to involving representatives of local interests in negotiating plans. The governance system has to be flexible in responding to each type of land use decision; no single consensus process can serve all its needs. Therefore, it is important to consider how consensus processes can remain adaptable while at the same time ensuring their use in appropriate situations.

We see three general approaches to implementing consensus processes: a policy approach, a legislative approach, and a tribunal approach. They are not mutually exclusive; in fact, it may be useful to have all three in existence to deal with different types of land use issues and different levels of decision-making.

The ***policy approach*** is one where the initiative and mandate for consensus processes are established by government policy. The policy may be universal to an agency or department (for instance, Ministry of Lands and Parks), authorizing staff to use the process on an as-needed basis. Alternatively, the policy may be specific to a program in which a consensual mode of decision-making is preferred (for example, Coordinated Access Management Planning program).

This approach is probably the easiest to implement as it requires no disruption of legislated mandates. Some interests claim however, that it is also the most open to variable interpretation and therefore, inconsistent application. A policy on consensus processes would need to establish organizational incentives that ensure consensus processes would be used. Examples of organizational incentives include assigning process-related responsibilities to specific government officials or committees, or providing a budget for operation of such processes. Without such incentives, a policy approach could pay only lip service to the concept of consensus. The policy message must be clear, emanate from the top levels of government, and be backed up by appropriate procedural and organizational changes.

Under a ***legislative approach***, consensus processes would be mandated by an amendment to current legislation or under new legislation. The legislation could set out who has the authority to initiate a consensus process, could indicate certain types of decisions (for example, Tree Forest License plans) that would be made subject to such processes, and could make decision-makers accountable for implementing the outcome if consensus is achieved.

The ***tribunal approach*** envisions a special body such as a "Land Use Board", set up to review land use issues, decide whether a consensual approach is warranted, and oversee its establishment. Issues presented to the Board could be disputes over an existing government decision, protests of ongoing land use activities, conflicts with proposed developments, or calls for a plan to rationalize future land and resource activities. Issues could be conveyed to the Board by responsible government agencies, or concerned parties could invoke a consensus process by approaching the Board directly. The Board could require that the party or parties involved prove that they collectively agree to a decision by consensus as part of its assessment of the issue.

These options for implementation are not mutually exclusive, nor are they exhaustive. The Round Table would like to hear your ideas on these models, as well as comments on some key questions:

- Is there a need to give some legislative authority to consensus processes? If so, which statutes would be appropriate?

- Is it desirable to have a specific authority responsible for deciding when consensus processes are to be used?

- Should the initiation of consensus processes be left to the discretion of government staff? Should interests of all types have some avenue to call for a consensus-based decision on an issue?

- In any of these approaches, regulatory agencies would in most cases be parties in a consensus process, and therefore would be able, as would any party, to reject decisions that might compromise regulatory requirements for which they are responsible. Does this effectively preserve the government's legislated mandates and discretionary powers to act in the public interest?

The Round Table's Dispute Resolution Assistance Policy

As one of its terms of reference is to "foster the resolution of land use and other environment/economy disputes in situations where all affected parties have agreed to submit their problems to the Round Table", the Round Table has prepared itself to be able to respond to requests for assistance in resolving such conflicts. Its "Procedure for Responding to Requests for Dispute Resolution Assistance" sets out a series of steps that the Round Table would follow in first, assessing the issue as to whether a consensus-based resolution process would be appropriate, and second, setting up such a process with the assistance of a third party. The Round Table would also provide access to expert technical or scientific assistance where this would be suitable. The Round Table would require that any agreement reached specify procedures and responsibilities for its implementation, but would not itself be responsible for the substance of the agreement or its execution.

The Round Table's main objectives in this role are to facilitate the development of consensus processes, monitor their success, and encourage the development of appropriate skills. In this

regard, it will accept disputes where there is an opportunity to gain new insights and experience relevant to these objectives. Hence, while some disputes referred to it may be amenable to a consensus approach, the Round Table would not accept it unless it was a situation that allowed it to expand the understanding or application of consensus processes. In such cases, the Round Table hopes that it can refer the parties to other means of formulating a consensus process. In addition, the policy also states that members of the Round Table shall not themselves be directly involved in the process, as participants or as mediators, facilitators or any other third party mechanism.

Further information on the "Round Table Procedure for Responding to Requests for Dispute Resolution Assistance" is available from the Round Table's office in Victoria.

5. The Round Table: Next Stages in Implementing Consensus

Its examination of conflict resolution in B.C. has led the Round Table to present its perspective on a generic consensus process for making decisions about land use and the environment. The Round Table looks forward to receiving comments and further ideas from British Columbians interested in this topic.

In the meantime, the Dispute Resolution Core Group is planning the second and third stages of its investigation into consensus processes.

II: Implementing Consensus in B.C.: The Core Group will examine how consensus could be put to greater use in several aspects of the current system by which decisions on land and environment are made.

Opportunities for building consensus exist at all stages of decision-making; from the establishment of broad policies or sector-specific objectives, to long-range planning, to actually allocating land and resources, to managing activities on the ground, and to monitoring and enforcement. Within this wide range of opportunities, the Core Group has identified three areas of particular interest - partly, because experience exists in B.C., or in other jurisdictions with dealing with these areas in a collaborative manner, and partly because how to do them is presently being debated.

Setting environmental standards and regulations is one such area. B.C. has some experience in this regard; during the 1970s, the Pollution Control Board established a variety of pollution control objectives through public hearings. More recent and directly collaborative experience exists in the U.S. through what is called "negotiated rule-making". The legal and institutional setting that creates the incentive to use this approach is very different in the U.S. Nonetheless, in light of the need to revisit legislated environmental standards in B.C., the Core Group wishes to look at these experiences more closely for ideas on implementing a consensus approach, keeping in mind these differences.

Regional decision-making is another area where collaborative approaches are already widely used in the day-to-day allocation of land, water, and resources and the monitoring and enforcement of the terms of these allocations. The Core Group is interested in finding out if these activities could be enhanced by greater recognition of and training in consensual approaches to regional decision-making.

A third area of keen interest is land use planning. Various forms of consensual approaches are now being used in local planning efforts. These are some of the questions the Core Group wishes to investigate:

- Are these processes fulfilling the expectations of government, private, and public interests in terms of meaningful involvement in land use decisions?

- What would a consensus approach to land use planning in the regional and provincial contexts look like?[3]

[3] In this context, Washington state is developing legislative requirements for regional agencies to have dispute resolution expertise at hand to deal with local land use issues. There may be come opportunity to exchange ideas and experiences.

III. Consensus - the Next Generation: The third stage of the Core Group's work will take a look at the broad, institutional framework for land and natural resource management in B.C. - the administrative system, the rules and regulations, the market mechanisms - and ask the questions:

- Is this the best system for building and achieving consensus on the way in which land and resources will be used?

- There are already ideas in the literature on how government systems could be changed to better exploit the benefits of consensual decision-making. What do these theories suggest for government in B.C.? Knowledge about what the environment can withstand and aspirations about what kind of environment British Columbians want are changing. What does this mean by way of institutional trends? Should there be greater or lesser regionalization, more or less decentralization of decision-making?

To complement the work by other Round Table core groups, the Dispute Resolution Core Group suggests land use decision-making, energy planning, and building sustainable communities as example areas for examining decision-making systems.

The Round Table would like to hear your views on these and any other topics covered in this report.

References

Cormick, G. 1987. Commentary. In: Canadian Environmental Assessment Research Council, *The Place of Negotiation in EIA Processes: Institutional Considerations.*

Cormick, G. 1989. Strategic Issues in Structuring Multi-Party Public Policy Negotiations. *Negotiation Journal* 5(2): 125-132.

Cormick, G. 1991. "Consensus: Applying the Concept". Unpublished notes.

Dorcey, A. 1986. Techniques for Joint Management of Natural Resources: Getting to Yes. P. 14-31. In: J.O. Saunders (ed.), *Managing Resources in a Federal State.* Carswell, Toronto.

Dorcey, A. and C. Riek. 1987. Negotiation-based Approaches to the Settlement of Environmental Disputes in Canada. In: Canadian Environmental Assessment Research Council, *The Place of Negotiation in EIA Processes: Institutional Considerations.*

Hansen, J. 1991. Decision-making by True Consensus. Unpublished ms.

Haussmann, C. 1986. Environmental Mediation: what, when and how? *Canadian Environmental Mediation Newsletter* 1(3): 1-4.

Pritzker, D. and D. Dalton. 1990. *Negotiated Rulemaking Sourcebook.* Office of the Chairman, Administrative Conference of the United States. 923 p.

Shrybman, S. 1986. Environmental Mediation, p. 81-98. In: R. Lang (ed.), *Integrated Approaches to Resource Planning and Management.* Banff School of Management.

Susskind, L. and J. Cruikshank. 1987. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes.* Basic Books Inc., New York. 276 p.